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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,115	07/02/2003	Daniel Lee Holt	12929.1105US01	3914
23552	7590	10/28/2005	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			BARROW, JAMES G	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 10/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/612,115	HOLT ET AL.	
	Examiner	Art Unit	
	James G. Barrow	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4, 6-12, 15, 17-23, 26, 27 and 29-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 6-12, 15, 17-23, 26, 27, and 29-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1, 2, 4, 6-9, 11, 12, 15, 17, 18, 20-23, 26, 27, and 29-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Binzer (5,299,558). Binzer discloses a fireplace having a combustion chamber 6, a combustion source 22, a vent system for venting exhaust gasses (see figure 4) a flue connection member consisting of a plate portion 58 and 62 having a hollow cylindrical extending member above (unnamed part in figure 1) for attachment to a flue 4 and below 66 through seating member 64 for attachment to plate-like fireplace connection member 34. Plate portion 58 and 62 broadly define a U-shaped opening or notch for the tab 68 of the fireplace connection to extend into. The fireplace connection member 34 has a movable latch 69 that extends over the flue connection member 58 and 62 to couple the flue connection member 58 and 62 to the fireplace connection member 34. Regarding method claims 26, 27, and 29-31, the apparatus anticipates the method of using it.
3. Claims 1, 2, 4, 6, 9, 11, 12, 15, 18, 20-23, 26, 27, and 29-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Cannata (4,683,623). Cannata discloses a fireplace insert 11 that inherently has a combustion chamber, a combustion source, a vent system, a flue connection member 46 having a plate portion (along line 79 in figure 2) with extending member above 65 and below 40 configured to be coupled with a flue 12, a fireplace connection member 35 having a plate portion 140. The flue connection

portion 40 extends into seating member 120. Regarding method claims 26, 27, and 29-31, the apparatus anticipates the method of using it.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Binzer (5,299,558) as applied to claims 1, 2, 4, 6-9, 11, 12, 15, 17, 18, 20-23, 26, 27, and 29-31 above, and further in view of Binzer (5,299,558). Binzer does not disclose the flue connection means for a slant back type fireplace. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to use the flue connection means of Binzer on a slant back fireplace because Applicant disclosed that "the arrangement, shape, and configuration of the flue ducts or appliance can vary without affecting the application of the present invention. For example, the flue ducts could extend vertically or horizontally. Additionally, the flue ducts could extend vertically and then extend horizontally. Also, the flue ducts can be desired in any number of shapes. They could be cylindrical, rectangular, or any other desired shape, size, or diameter of duct. The appliance itself can also be shaped in any manner and still benefit from the present invention" (P: 5, L: 23-30) which the Examiner interprets the design of the invention is not limited to slant back fireplaces. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to

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perform equally well on a fireplace having a horizontal venting system because Applicant has stated that the invention could be used on a fireplace having a horizontal venting system. Therefore, it would have been an obvious matter of design choice to modify Binzer to obtain the invention as specified in claims 10 and 19.

6. Claims 10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cannata (4,683,623) as applied to claims 1, 2, 4, 6, 9, 11, 12, 15, 18, 20-23, 26, 27, and 29-31 above, and further in view of Cannata (4,683,623). Cannata does not disclose the use of the flue connection member on a slant back fireplace. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to use the flue connection means of Cannata on a slant back fireplace because Applicant disclosed that "the arrangement, shape, and configuration of the flue ducts or appliance can vary without affecting the application of the present invention. For example, the flue ducts could extend vertically or horizontally. Additionally, the flue ducts could extend vertically and then extend horizontally. Also, the flue ducts can be desired in any number of shapes. They could be cylindrical, rectangular, or any other desired shape, size, or diameter of duct. The appliance itself can also be shaped in any manner and still benefit from the present invention" (P: 5, L: 23-30) which the Examiner interprets the design of the invention is not limited to slant back fireplaces. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well on a fireplace having a horizontal venting system because Applicant has stated that the invention could be used on a fireplace having a horizontal venting system. Therefore, it would have been an obvious matter of

design choice to modify Cannata to obtain the invention as specified in claims 10 and 19.

Response to Arguments

7. Applicant's arguments with respect to claims 1, 2, 4, 6-12, 15, 17-23, 26, 27, and 29-31 have been considered but are moot in view of the new ground(s) of rejection.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James G. Barrow whose telephone number is (571) 272-4870. The examiner can normally be reached on M-F, 9:30 A.M.-6:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**EHUD GARTENBERG
PRIMARY EXAMINER**